THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No.7733 of 2006

Dated:22.02.2007

Between

Gandrothu Sathi Babu

…Petitioner

And

The Inspector of Police,
Gajuwaka Police Station,
Visakhapatnam and another.

…Respondents

THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No.7733 of 2006

ORDER:

This writ petition is filed seeking to issue a writ of Mandamus declaring the high handed action of the first respondent in forcibly taking away the son of the petitioner-Gandrothu Sri Harsha from the lawful custody of the petitioner on 11.03.2006 and handing over him to the second respondent as illegal and arbitrary.

The case of the petitioner is that he is the husband of the second respondent having married her on 02.08.2001 and out of their lawful wedlock, a child was

born namely Gandrothu Sri Harsha on 07.06.2002. It is stated that the second respondent used to leave the matrimonial house frequently without caring and informing the petitioner and that the petitioner used to look after the welfare of the child. As the marital relationship was strained, the petitioner filed O.P.No.5 of 2006 under Section 9 of the Hindu Marriage Act, 1955, before the Senior Civil Judge, Anakapalle, on 13.02.2006 and the same is pending. While so, at the instigation of the second respondent, the first respondent-Inspector of Police, Gajuwaka Police Station, on 11.03.2006, forcibly took away the said Sri Harsha from the custody of the petitioner and handed over him to the second respondent. Thereafter, the second respondent addressed a letter to the first respondent on 13.03.2006 withdrawing the complaint, dated 11.03.2006, lodged against the petitioner. Hence, the present writ petition is filed by the petitioner seeking a direction to the first respondent, who has forcibly taken away his son from his custody on 11.03.2006, to hand over him the custody of his son-Gandrothu Sri Harsha, who is aged 3 ½ years.

A counter has been filed by the first respondent stating that the second respondent lodged a complaint on 11.03.2006 alleging that the petitioner went to Dubai for job purpose and came back in the month of November

2005 to Anakapalle of Visakhapatnam District and left her and her child at her parents house on 28.11.2005 and that on the same day, the petitioner came there and took her child on the pretext that he would purchase chocolates, but did not turn up. It is further stated in her complaint that all her efforts to trace the child became vain. Upon receipt of the said complaint, an entry was made in the General Diary on 11.03.2006 and a notice was issued to the petitioner asking him to attend the Police Station. On receipt of the notice, the petitioner attended the Police Station along with his child and he himself handed over the child to the second respondent and the second respondent requested the first respondent not to take any action against her husband (the petitioner) and withdrew the complaint. Now, the child is in the custody of the second respondent.

All other allegations made in the writ affidavit that the child was forcibly taken away by the first respondent from the custody of the petitioner and was handed over to the second respondent were denied.

Having regard to the categorical statement made in the counter-affidavit that the petitioner himself has handed over the child to the second respondent and also in view of the disputed questions of fact involved, I am of the opinion that this Court cannot conduct an enquiry into the

matter. Therefore, it is left open for respondents-authorities to take appropriate steps for the legal custody of the minor child in accordance with law.

The writ petition is, accordingly, dismissed. There shall be no order as to costs.

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V.ESWARAIAH, J

22.02.2007
DR